

HOUSE BILL 1423

By Harwell

AN ACT to amend Tennessee Code Annotated, Title 37 and Title 49, relative to a foster child scholarship program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 50, is amended by adding Sections 2 - 8 as a new, appropriately designated part:

SECTION 2. The general assembly finds that:

(a) Foster children are among the most at-risk children in our society. Adults formerly in foster care are more likely to be homeless, incarcerated, and dependent on state services than the general population. Foster children face a number of unique disadvantages and require specially tailored assistance during their school years and with the difficult transition from youth to adulthood.

(b) One (1) key factor in determining whether a foster child will achieve a successful transition is the quality of primary and secondary education such child receives. Unfortunately, too many foster children receive a substandard education. Compared to the general population, foster children have lower scores on standardized tests and higher absenteeism, tardiness, truancy, and dropout rates.

(c) A significant problem for children in foster care is instability. Approximately half of all foster children will spend at least one (1) year in foster care, with 20 percent (20%) staying in foster care longer than three (3) years. Children in long-term foster care often experience multiple home placements which can result in multiple school transfers. School transfers can impose gaps in the learning cycle, as

children move from classroom to classroom and must adjust to new settings, teachers, students, and, in many cases, special services. School transfers also result in emotional instability and the loss of important friendships with peer groups. A synthesis of foster care research finds that the occurrence of fewer placements during foster care is associated with better school achievement and more years in education.

(d) Providing foster children with a tuition scholarship will help to ensure that a child continues to attend a quality school even if such child experiences frequent home transfers. Moreover, a scholarship could provide better educational opportunities for those children who must overcome many challenges to succeed in the classroom. For the many foster children who are eligible for special education services, a tuition scholarship would help ensure that these needs are met.

SECTION 3. For purposes of this section unless the context otherwise requires:

- (1) "Department" means the department of education;
- (2) "Eligible student" means any elementary or secondary student, or such student's sibling, who is eligible to attend public school and who is in foster care;
- (3) "Guardian" includes a parent, foster care parent, guardian, or other person with the authority to act on behalf of the child;
- (4) "Participating school" means either a public school outside of an eligible student's resident school district or zone or any non-public school that provides education to elementary or secondary students and has notified the department of its intent to participate in the program and comply with the program's requirements;
- (5) "Program" means the foster child scholarship program;
- (6) "Resident school district" means the public school district in which the student resides.

SECTION 4.

(a) Any student who is in foster care has the opportunity to receive a scholarship from the state to enroll in and attend a participating school.

(b) Eligible students shall retain program eligibility regardless of subsequent placement out of the foster care system and until their graduation from high school or the student's twenty-first birthday, whichever comes first.

(c) Any eligible student shall qualify for an annual scholarship in an amount equal to the lesser of:

(1) The participating school's annual cost per pupil, including both operational and capital facility costs, and including any costs associated with the eligible student's special needs; or

(2) The dollar amount the resident school district would have received to serve and educate the eligible student from federal, state and local sources had the student enrolled in such district including costs for an individualized education program, if applicable.

(d) The decision to enroll in a participating school shall be made by the eligible student's current guardian at the time of enrollment.

(e) The scholarship is the entitlement of the eligible student under the supervision of the eligible student's guardian. The scholarship shall never be considered the entitlement of any school.

(f) A participating school shall not refund, rebate or share a student's scholarship with a student or guardian in any manner. A student's scholarship may be used for educational purposes such as tuition, special education services, transportation costs, uniforms, books or other school fees, tutoring, and other extra-curricular programs with an educational purpose. Such expenses are authorized when a participating school is either providing these services or is under contract with a third party to provide these services. In either case, scholarship funds are payable only to the participating school.

(g) A participating school is authorized to accept eligible students on a first come, first served basis until such time as the school has more eligible students applying than spaces available. When a participating school is oversubscribed the school shall fill the available spaces by a random selection process, except that a participating school may give preference to siblings of enrolled students and previously enrolled scholarship students under this part.

(h) If a student is denied admission to a participating school because such school has too few available spaces, the eligible student may transfer the student's scholarship to a participating school that has spaces available.

(i) Eligible students shall be counted in the enrollment figures for the school district in which the student resides for purposes of calculating state funding to the resident school district. The moneys necessary to fund a student's scholarship shall be withdrawn from the state school funding for the student's resident school district. Any funding the school district would have received for the student in excess of the funds needed for a scholarship shall be retained by the state.

(j) The department shall promulgate rules consistent with this part regarding:

(1) The eligibility and participation of non-public schools including timelines that will maximize student and public and non-public school participation;

(2) The calculation and distribution of scholarships to eligible students;

(3) The application and approval procedures for scholarships; and

(4) The sharing of student records between participating schools in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g).

SECTION 5.

(a) The resident school district shall provide a participating school that has admitted an eligible student with a complete copy of the student's school records in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g).

(b) The resident school district shall provide transportation for the eligible student to and from the participating school under the same conditions as the resident school district is required to provide transportation for other resident students to non-public schools. The resident school district shall qualify for state transportation funding for each student so transported.

SECTION 6.

(a) The department shall ensure that eligible students and their guardians are informed annually of which schools will be participating in the program. This information shall also be provided to all state agencies and other organizations that are involved in issues pertaining to foster care to maximize the awareness among potential beneficiaries.

(b) The department shall create a standard application that a student interested in the program can submit to participating schools to establish the student's eligibility and apply for admission. Participating schools may require supplemental information from applicants. The department shall ensure that the application is readily available to interested families through various sources, including the Internet.

(c) The department is authorized to prohibit a school from participating in the program if the department establishes that the participating school has:

(1) Intentionally and substantially misrepresented information required under Section 7; or

(2) Routinely failed to comply with at least three (3) of the accountability standards established under Section 7; or

(3) Failed to refund the state any scholarship overpayments in a timely manner.

(d) If the department decides to bar a participating school from the program, it shall notify eligible students and their guardians as quickly as possible.

(e) The department shall adopt rules and procedures necessary for the administration of the program.

SECTION 7. To be eligible to participate in the program a non-public school must operate in this state and demonstrate that the school is:

(a) Administratively accountable. In order to ensure that students are treated fairly and kept safe, all participating schools shall:

(1) Comply with all health and safety laws or codes that apply to non-public schools;

(2) Hold a valid occupancy permit if required by their municipality and certify that such school shall not discriminate in admissions on the basis of race, color, national origin, or religion; and

(3) Comply with all state laws that apply to non-public schools regarding criminal background checks for employees and exclude from employment any person not permitted by state law to work in a non-public school;

(b) Financially accountable. In order to ensure that public funds are spent appropriately, all participating schools shall:

(1) Demonstrate their financial accountability by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The auditor shall certify that the report is free of material misstatements. The auditor's report shall be limited in scope to

those records that are necessary for the department to make payments to schools for scholarships; and

(2) If the school is to receive fifty thousand dollars (\$50,000) or more during the school year, demonstrate the school's financial viability by:

(A) Filing with the department prior to the start of the school year a surety bond executed by a surety company authorized to do business in this state and made payable to the state in an amount equal to the aggregate amount of the program scholarship funds expected to be paid during the school year on behalf of students admitted to the participating school; or

(B) Filing with the department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the program scholarship funds expected to be paid during the school year on behalf of students admitted to the participating school;

(c) Academically accountable. In order to ensure that schools are accountable to the guardians of the students in the program, all participating schools shall regularly report to the guardian on the student's academic progress; and

(d) Is autonomous and not an agent of the state or federal government.

(A) The department or any other state agency shall not in any way regulate the educational program of a participating, non-public school that accepts a program scholarship.

(B) The creation of the program does not expand the regulatory authority of the state, its officers or any school district to impose any additional regulation of non-public schools beyond those reasonably necessary to enforce the requirements of the program. A participating non-public school shall be given the maximum freedom

to provide for the educational needs of the school's students without governmental control.

SECTION 8.

(a) The comptroller of the treasury shall conduct a performance audit of the program.

(b) The audit shall include assessments of:

(1) The level of participating students' satisfaction with the program;

(2) The level of guardian satisfaction with the program;

(3) The percentage of participating students who exhibited behavioral problems at the student's resident school district compared to the percentage exhibiting behavioral problems at the student's participating school;

(4) The class size experienced by participating students at the student's resident school district and at the student's participating school; and

(5) The fiscal impact to the state and resident school districts of the program.

(c) The comptroller shall apply appropriate analytical and behavioral sciences methodologies to ensure public confidence in the study.

(d) The comptroller shall report to the senate and house education committees of the 106th general assembly prior to February 15, 2010.

(e) The public and non-public participating school from which students transfer to participate in the program shall cooperate with the research effort by providing student assessment instrument scores and any other data necessary to complete this study.

SECTION 9. The department shall promulgate rules necessary to effectuate the provisions of this act in accordance with the provisions of the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

SECTION 10. For purposes of rulemaking, the hiring of staff, and any other actions necessary to prepare for implementation of the foster child scholarship program this act shall take effect upon becoming a law, the public welfare requiring it. Sections 4-8 shall take effect upon January 1, 2008, the public welfare requiring it. All other sections shall take effect upon becoming law, the public welfare requiring it.